

MAY 17 2006

EMPLOYER STATUS DETERMINATION
Saginaw Bay Southern Railway

This is the determination of the Railroad Retirement Board concerning the status of Saginaw Bay Southern Railway (SBS), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding SBS was provided by Lyle Tolfree II, Assistant Controller of Lake State Railway Company (LSR). SBS, LSR and Huron Leasing Company are owned by J&JG Holding Company. LSR is a covered employer under the Acts (B.A. Number 3289). According to Mr. Tolfree, SBS began operations on October 28, 2005. SBS is budgeted to haul 36,900 carloads annually, consisting primarily of coal, aggregates, chemicals, plastics, and grain. In Surface Transportation Board Finance Docket No. 34729, SBS filed a notice of exemption to acquire and operate approximately 67 miles of rail line from CSXT. SBS interchanges with LSR, CSXT, the Huron Eastern & Saginaw Valley Railway, and the Mid-Michigan Railway. SBS has no employees, no equipment, and contracts with LSR for operation of the railroad. LSR owns all of the equipment and hired the employees from CSX Transportation (CSXT), with a first day of compensation of October 28, 2005.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The fact that an entity has sought and obtained STB authority to operate a rail line is evidence that it is subject to STB's statutory jurisdiction over railroad transportation. In addition, despite the fact that a particular entity may contract with another company to operate its rail line, the entity which has been certified by the STB to operate the line has a continuing obligation to furnish rail transportation over the line until such time as the STB issues authority permitting the cessation of rail transportation over that line. In STB Finance Docket 37429, SBS obtained the authority from the STB to both acquire and operate the line in question. Even though railroad operations are performed by LSR, SBS has the ultimate responsibility to either see to it that railroad operations continue or to obtain authority to discontinue such operations ("Following the effective date of the exemption noticed hereby, SBS will provide service over the Line through the use of a contract operator; namely, Lake State Railway Company, although only SBS will hold responsibility for providing common carrier service over the Line", STB Finance Docket No. 34729, Verified Notice of Exemption, p.2).

The Board notes that in its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board. SBS certified to the STB that its projected revenues do not exceed those that would qualify it as a Class III rail carrier and that its revenues will exceed \$5 million (STB Finance Docket No. 34729, Verified Notice of Exemption, p.4). The Board therefore finds that SBS is an enterprise which is intended to profit from railroad activities. In addition, SBS is under common control with another active carrier (LSR) evidencing that SBS has as its primary business purpose to profit from its rail activities.

Accordingly, it is determined that Saginaw Bay Southern Railway is an employer within the meaning of section 1(a)(1)(i) of the Railroad

Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of October 28, 2005, the date it began operations.

Original signed by:

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